

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLARD L. SLOAN, EUGENE J.
WINNINGHAM, and JAMES L. KELLEY,

Plaintiffs,

v.

BORGWARNER INC., BORGWARNER
DIVERSIFIED TRANSMISSION
PRODUCTS INC., and BORGWARNER
FLEXIBLE BENEFITS PLANS,

Defendants.

Case 2:09-cv-10918-PDB-MKM

U.S. District Judge Paul D. Borman

U.S. Mag. Judge Mona K. Majzoub

**STIPULATED ORDER STAYING CASE PENDING
SUPREME COURT DISPOSITION OF *TACKETT***

The parties hereby stipulate that:

1. On February 27, 2014, the Court denied both Plaintiffs' and BorgWarner's motions for summary judgment on the issue of whether Plaintiffs' health benefits are vested and set the vesting issue for trial. (R. 127, Op. & Order 53.)

2. The Court's current scheduling order requires submission of the final pretrial order by 3:00 p.m., on August 11, 2014. (R. 129, Am. Sched. Order 1.) The Court has informed the parties that a trial would not be scheduled before February 2015.

3. On May 5, 2014, the Supreme Court of the United States issued a writ of certiorari to the U.S. Court of Appeals for the Sixth Circuit in *M&G Polymers USA, LLC v. Tackett*. The Court's decision in that case may alter the law of vesting for collectively bargained retiree health benefits. *See* 134 S.Ct. 2136, 2136 (2014).

4. As the Court recognized recently, the Supreme Court's decision in *Tackett* "will likely require this Court to revisit its summary judgment ruling and may require a different analysis that could affect the ultimate resolution of this case." (R. 133, Order 4.) A stay of this action pending the ruling in *Tackett* will conserve the resources of the parties and the Court, allowing them to avoid the time and expense associated in preparing for and trying a case in which the controlling law may be changed.

5. Accordingly, the parties hereby stipulate and agree that the case should be stayed pending resolution by the U.S. Supreme Court of *Tackett*, and request the Court to convene a status conference thirty days following the resolution of *Tackett*, at which time the parties can discuss with the Court how best to proceed.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: June 20, 2014

Stipulated to by:

By: /s/ David R. Radtke
David R. Radtke (P47016)
Roger J. McClow (P27170)
Patrick J. Rorai (P65091)
McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.
400 Galleria Officentre, Suite 117
Southfield, Michigan 48034
248.354.9650
248.354.9656 fax
(dradtke@kmsmc.com)
(rmcclow@kmsmc.com)
(prorai@kmsmc.com)

Attorneys for Willard L. Sloan, Eugene J. Winningham, and James L. Kelley

By: /s/ Joshua D. Rogaczewski (with consent)

Bobby R. Burchfield

Joshua David Rogaczewski

McDERMOTT WILL & EMERY LLP

The McDermott Building

500 North Capitol Street, NW

Washington, D.C. 20001

202.756.8000

202.756.8087 fax

(bburchfield@mwe.com)

(jrogaczewski@mwe.com)

Elisa Angeli Palizzi (P52088)

MILLER, CANFIELD, PADDOCK

and STONE, P.L.C.

150 West Jefferson, Suite 2500

Detroit, Michigan 48226

313.496.7635

313.963.6420 fax

(angeli@millercanfield.com)

*Attorneys for BorgWarner Inc., BorgWarner
Diversified Transmission Products Inc., and
BorgWarner Flexible Benefits Plans*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 20, 2014.

s/Deborah Tofil

Deborah Tofil

Case Manager (313) 234-5122